

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 82-6152

CHARLES SYLVESTER STAMPER,

*Appellant,*

VS.

ALTON BASKERVILLE,

*Appellee.*

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Appeal from the United States Court of Appeals  
for the Eastern District of Virginia.

D. Dortch Warriner, District Judge.

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ORDER

The appellant was convicted on three charges of capital murder, one charge of robbery and three charges of using a firearm during commission of a felony. On August 30, 1979, the Supreme Court of Virginia found no reversible error, affirmed all seven convictions, and independently determined that the three death sentences were properly imposed. *Stamper v. Commonwealth*, 220 Va. 260, 257 S.E. 2d 808 (1979). A writ of habeas corpus was filed in the United States District Court for the Eastern District of Virginia, Richmond Division, on January 19, 1982. The district court wisely<sup>1</sup> appointed separate counsel to investi-

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<sup>1</sup> This does not indicate that the court feels that there was ineffective assistance of counsel, but only a comment on the district court's foresight to include this ground and possibly head off a later petition.

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gate possible claims of ineffective assistance of counsel at the trial stage and the state appellate state [sic]. The appointment resulted in the filing of an amended petition adding claims of ineffective assistance of counsel. This claim had never been presented to or considered by the state courts of the Commonwealth of Virginia.

On February 12, 1982, the district court entered judgment denying the amended petition for a writ of habeas corpus on all claims. *Stamper v. Baskerville*, No. 82-0025-R (February 12, 1982). On March 3, 1982, the United States Supreme Court in *Rose v. Lundy*, U.S. 50 U.S.L.W. 4272 held that a district court must dismiss habeas petitions containing both unexhausted and exhausted claims.

It is, therefore, ordered that this matter be remanded to the district court for dismissal pursuant to *Rose v. Lundy*.

FOR THE COURT—BY DIRECTION:

WILLIAM K. SLATE, II  
*Clerk*

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 82-6152

CHARLES SYLVESTER STAMPER,

*Appellant,*

VERSUS

ALTON BASKERVILLE, Superintendent

*Appellee.*

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Appeal from the United States District Court for the  
Eastern District of Virginia, at Richmond.

D. Dortch Warriner, District Judge.

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Upon consideration of a motion of the appellee, for stay  
of mandate pending application to the Supreme Court of  
the United States for a writ of certiorari,

IT IS ORDERED that the motion is DENIED.

FOR THE COURT—BY DIRECTION:

/s/ WILLIAM K. SLATE, II  
*Clerk*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

**RICHMOND DIVISION**

**Civil Action No. 82-0025-R**

**CHARLES SYLVESTER STAMPER,**

*Petitioner,*

**v.**

**ALTON BASKERVILLE, Superintendent,**

*Respondent.*

**WAIVER OF EXHAUSTION**

Now comes the Respondent, by counsel, and states as follows:

1. The Respondent states to the Court that the Respondent waives exhaustion of state court remedies as to the Petitioner's allegations.

WHEREFORE, Respondent prays that this Court will consider the Petitioner's claims and thereafter deny and dismiss said claims.

**ALTON BASKERVILLE, *Superintendent***

**By: THOMAS D. BAGWELL  
*Counsel***

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**Thomas D. Bagwell  
Assistant Attorney General  
Supreme Court Building  
6th Floor  
101 North Eighth Street  
Richmond, Virginia 23219**

**CERTIFICATE OF SERVICE**

I certify that on this 25th day of October, 1982, a copy of the foregoing Waiver of Exhaustion was mailed to Gary J. Spahn, Esquire, **MAYS, VALENTINE, DAVENPORT & MOORE**, P. O. Box 1122, Richmond, Virginia 23208.

**THOMAS D. BAGWELL**  
*Assistant Attorney General*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

**RICHMOND DIVISION**

**Civil Action No. 82-0025-R**

**CHARLES SYLVESTER STAMPER,**

*Petitioner,*

**v.**

**ALTON BASKERVILLE, Superintendent,**

*Respondent.*

**MOTION FOR STAY**

Now comes the Respondent, by counsel, and moves this Court for a stay of decision in the above-styled matter as follows:

1. Respondent states that the United States Court of Appeals for the Fourth Circuit remanded this case to this Court by an order dated October 4, 1982, for dismissal pursuant to *Rose v. Lundy*, 455 U.S. —, 50 USLW 4272 (March 3, 1982).
2. The Respondent applied for a stay of the mandate in the United States Court of Appeals which was denied by an order dated October 14, 1982.
3. The Respondent has decided that he will petition the United States Supreme Court for a writ of certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit. Respondent requests this Court to stay issuance of any decision until after consideration by the Supreme Court of the United States.

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WHEREFORE, for the reasons stated, the Respondent requests this Court to stay its consideration of this case until the Respondent's petition for a writ of certiorari to the United States Supreme Court can be decided.

**ALTON BASKERVILLE, *Superintendent***

**By: THOMAS D. BAGWELL**  
*Counsel*